

James Kelly Monroe, RECEIVED

Plaintiff

Civil No. 06-LV-928-

2007 FEB -2 AM: 15

MEF

V.  
Officer L. Thomas et al.  
Defendants

CLERK P. HACKETT  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

## Objection To Defendants' Answer

Comes Now, James Kelly Monroe, the plaintiff in the above enumerated case to move the Honorable Court for an order denying the defendants request for Summary judgment pursuant to Fed. Rules of Civ. Proc., Rule 56 et. seq.

Whereas, on January 16<sup>th</sup>, 2007; the defendants' filed their answer to the Complaint. Further, they denied every material allegation contained in the complaint, See Defendants' answer at pg 1. In addition, they asserted the affirmative defense of qualified immunity, See Defendants' answer at pg 1. Further, the defendants assert they cannot be held liable under the doctrine of Respondeat Superior or vicarious theories. See Defendants' answer at pg 2. Also, they cannot be sued in their individual capacities. See Defendants' answer at pg 2. In addition, they cannot be sued in their official capacities. See

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defendants' answer at pg 2. Finally, they are entitled to summary judgment pursuant to Title 42 U.S.C. Section 1997(e)(c).

### [ Memorandum ]

In the U.S. District Court for Middle District of Alabama, the Court held summary judgment was proper for defendants, when there is a lack of evidence of Officials deliberate indifference, see Calhoun v. Thomas, 360 F. Supp. 2d 1264 (M.D. Ala. 2005). In the instant case, the defendants violated the plaintiff's eight amendment right, when ~~they~~ failed to transfer the plaintiff to Baptist South, even though the Staff, the doctor, the Warden, and Assistant Warden knew, and they disregard his need for more comprehensive treatment at Baptist South; yet, the plaintiff was held at the Prison hospital for questioning by I & I Officer Sasser, see (Alabama Department of Corrections' Special Report). Furthermore, Baptist South's records reveal that plaintiff did not arrive until approximately 2:42 mt or 9:42 p.m. (See Baptist South's Nursing Chart Long form at pg 1). In addition, the Baptist South's record reveals that the plaintiff was in substantial pain. (See Baptist South's

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Nursing chart long form; Pain Scale [sharp pain in upper back] at pg 1). Further, Prison Health Service's record reveal that plaintiff arrived at its facility at 7:40 p.m. on September 4<sup>th</sup>, 2006 complaining of a stab wound in his back, See (defendant's exhibit E). Hence, there was over two hours (9:42 p.m. - 7:40pm = 2 hours) difference in time between plaintiff arrival at the (PHS) facility or prison hospital, and the transfer to Baptist South hospital. In addition, the doctor, Paul Lorbier, authorized the transfer by phone; [Dr. Lorbier was not physically at the (PHS) facility], See Exhibit E (Admission date & Time [9/4/06; 7:40 p.m.] also reported Dr. Lorbier under Physical examination) Furthermore, the staff present at the PHS facility on the night of the injury only examined the wide of the stab wound of 2.5 cm. (See Exhibit E Nature of injury) However, Baptist South's records revealed the depth of the wound of 4 cm. (See Baptist South Procedure at Site (Back) at pg 1.) Also, (Baptist South Emergency physician record at wound description). Hence, the plaintiff received a serious injury, and he told Dr. Toms he almost died from the bleeding. See (Interdisciplinary progress notes date 9/21/06). In Hale v. Tallapoosa County,

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50 F.3d 1579, 82 (11<sup>th</sup> Cir 1995) (The 11<sup>th</sup> Circuit Court held to be deliberately indifferent a prison Official must to risk of serious harm (2) there was a substantial risk of serious harm (3) must be causation between deliberate indifference and plaintiff's substantial risk of serious harm.) Hence, the defendants acted with deliberate indifference to the plaintiff's health, when they waited until Warden Thomas arrived in order that I & I Officer Sasser could investigate/interrogate the plaintiff before he was transported to Baptist South Hospital two hours after he arrived at the PHS Facility; i.e. Plaintiff stated to Dr. Toms "I almost died from the bleeding", and "they are going to get a lawsuit from this". See (Interdisciplinary progress notes at 9/21/06 at 10 a.m.). In addition, the plaintiff continues to complain about "bladder problems" and depression/Anxiety. See (Interdisciplinary progress notes at 11/9/06 at 9:30 A.M.).

Therefore, the defendants are not entitled to Summary judgment, and the above enumerated case should be set for trial by the Honorable Court. Where, Austin v. Johnson, 328 F.3d 204 (5<sup>th</sup> Cir. 2003) (Court denied prison officials a grant of qualified immunity on plaintiff claim when they waited two hours before calling



an ambulance after the plaintiff showed signs of dehydration such as vomiting and losing consciousness). Hence, the defendants in the instant case waited two hours before transporting the plaintiff to Baptist South Hospital for his serious medical condition; Thus, they should be denied qualified immunity.

Thirdly, the Doctrine of Respondeat Superior applies because the PHS physician and Administrator were aware of the plaintiff's serious medical condition, but failed to transport the plaintiff immediately to the Baptist South Hospital; In fact, they waited for approximately two hours, even giving the I & I Officer a chance to interrogate the plaintiff. Therefore, Ms. Sager, administrator; and Dr. Lorbier, PHS's physician, are directly responsible for the actions of the staff whom acted with a deliberate indifference to the plaintiff health/or serious medical condition.

Fourthly, the defendants are liable in their individual capacity because each were aware of the seriousness of plaintiff's injury and disregard it, in order that he could be interrogated before he was transferred to Baptist South Hospital, see JACKSON

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v. First Correctional Medical Services, 380 F. Supp.2d 387 (D. Del. 2005) (The U.S. District Court of Delaware denied motion to dismiss the plaintiff's Section 1983 Claims against a prison's medical Subcontractor where plaintiff alleged hearing loss was the result of defendant's delay and missteps in treating his chronic ear problems.) Hence, the defendants in the instant case should be held liable in their individual capacities because they are not agents of the state, but a contractor/subcontractor, i.e. (PHS) Prison Health Service Inc.

Fifthly, the defendants are not entitled to Eleventh Amendment/or Absolute immunity due to fact, they are not agents of the state nor an "Arm of the state, but rather a private contractor. See Manders v. Lee, 338 F.3d 1304 (11th Cir 2003) (Court held Eleventh amendment immunity bars suits brought in Federal Court when the state itself is sued, and an arm of the state is sued.) However, (PHS) or Prison Health Service is not an agent of the state nor arm of the state, but a private contractor; Thus, they are not entitled to Eleventh Immunity bar from suits.

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Finally, Title 42 U.S.C. Section 1997e(a) requires a prisoner to exhaust any available administrative remedies before challenging prison conditions in Federal Court, cited in Woodford v. Ngo, 165 L.Ed.2d 368 (2006). In the instant case, the plaintiff filed numerous medical grievance. See Exhibit 1, 2, 3. Where, several of the medical grievances received no response. See Exhibit 2, 3. In Shalala v. Illinois Council on Long Term Care, 146 L.Ed.2d 1 (2000) (Court held that "futility" was an exception to exhaustion). Hence, in the instant case, the medical grievance was a futile process for several reason (1) It becomes moor to file a medical grievance, due to fact, the deliberate indifference to the plaintiff's serious medical condition only occurred once; Thus, it would be irrational to request the medical staff to control the act, i.e. a deliberate delay in transporting plaintiff to Baptist South, because plaintiff has no future need to be treated on the stabbing incident. (2) Plaintiff filed numerous medical grievance, and sick call request to try to obtain follow-up treatment which was a futile.

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Therefore, plaintiff did all he could to properly exhaust the medical grievance process. In Fact, the medical Staff only responded ON 9/22/06 to one medical grievance. See Exhibit 1; and no response on the other two medical grievances. See Exhibit 2 and 3.

Finally, plaintiff tried to obtain a formal grievance form, but did not receive one. Thus, the defendants are not entitled to dismissal pursuant To title 42 U.S.C. Section 1997e (a). See Sims v. Apfel, 147 L.Ed.2d 80 (2000) (Court held Administrative law contains well established EXceptions to exhaustion); Also, Shalala, supra. (futility); Also, McKart, Supra, 23 L.Ed.2d 194 (1969) (hardship); Also, McLarthy, Supra, 117 L.Ed.2d 291 (1992) (inadequate or unavailable administrative remedies).

In sum, all defendants acted with or omitted to act resulted in a deliberate indifference to the medical condition of the plaintiff; Therefore, his claim is properly before the Honorable Court, and Summary judgment is precluded by Law, See Farmer v. Brennan, 128 L.Ed.2d 811 (1994) (A prison Official may be held liable "deliberate indifference" to a substantial risk Of serious harm to a prisoner violates the



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the eighth amendment, only if the Official is subjectively aware that the prisoner faces such a risk and disregard that risk by failing to take reasonable measures to abate the risk.) Hence, it was unreasonable for the Doctor, Administrator or Staff to delay by two hours the transfer of the plaintiff to Baptist South, even though they knew, and disregard the constant loss of blood and the pain suffered by plaintiff only for the purpose of conducting an interrogation on the stabbing of James Kelly Monroe, Micheal Grant, and Vincent Lrim by Andre Jolly, a violent inmate, whom had previously stabbed another inmate at St. Clair Co. Correctional facility. Therefore, the plaintiff prays the Honorable Court will reject the defendant's motion for summary judgment, and set the case for trial.

Where, the plaintiff affirm under the penalty of perjury that the foregoing declaration is true and correct to the best of his knowledge and understanding of the facts.

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Date executed

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Pro Se Signature

Certificate of Service

I, James Kelly Monroe, affirm that I have served a copy of the Objections on the attorney for the defendants, Paul M. James, Jr. at Rushton, Stakely, Johnston & Garrett, P.A.; P.O. Box 270; Montgomery, AL 36101-0270 by U.S. Postal Service on this \_\_\_\_\_ day of January, 2007

\_\_\_\_\_  
Date executed

James K Monroe  
(Pro Se) Signature

Return Address:

James Kelly Monroe  
AIS# 167435  
Station CF  
P.O. Box 56  
Elmore, AL 36025

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Sworn and Subscribed before me,  
Hearse, a notary public  
On this 30<sup>th</sup> day of January, 2007

1-22-08  
Date Lomission Expire

Hearse  
Notary Public

167435-C Dorm  
JAMES L. MONROE  
PO BOX 56  
ELMORE AL 36025  
9577

State Of Alabama  
Central Mail Ops  
#5



OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
PO BOX 711  
MONT. AL 36101-0711

Legal Mail



## Exhibit 1

Prison Health Services  
Inmate Informal Grievance

SCC

JAMES MONROE 167435  
NAME AIS #B-2-16-B  
UNIT9/20/06  
DATE

## PART A--Inmate Complainant

MY COMPLAINT IS ON NURSE URGENT AND THE NURSE THAT WAS ON ON 9/14-06 AT 7:30 PM. I WAS STABBED AT 7:30 AM WAS AT THE HEALTH CARE AT 7:40 PM, I DID NOT GET TO THE FREE WORLD HOSPITAL AT 1:15 PM. ONCE THEY SAW THAT THEY COULD NOT STOP MY FROM BLEEDING THEY SHALL HAVE GOTTEN ME TO THE HOSPITAL THEY DID NOT KNOW IT WAS BLEEDING ON THE INSIDE OR NOT, THEY DID NOT KNOW MY CONDITION I COULD HAVE DIED I LOST A LARGE AMOUNT OF BLOOD, THEY DONE A VERY POOR JOB, THEY WASHED UP A CUT AT WAS A LIFE THREATENING STABBED, IT SHALL NOT HAVE TAKEN FROM 7:40 TO 1:15 TO GET ME SOME CARE

James Monroe  
INMATE SIGNATURE

## PART B - RESPONSE

DATE RECEIVED

Body Chart on 9/14/06 indicates that the nurse contacted M.D. while shortly after arrival to HCH. You were triaged @ Hospital at 1242 AM.

E. Ellis, MD  
MEDICAL STAFF SIGNATURE

DATE

9/22/06

If resolution has not occurred and you wish to file a formal grievance you may request a grievance form from the Health Services Administrator. Return the completed grievance form to the Health Service Administrator.

	Y	N		Y	N
I Dissatisfied with Quality of Medical Care	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VI Delay in Health Care Provided	<input type="checkbox"/>	<input type="checkbox"/>
II Dissatisfied with Quality of Dental Care	<input type="checkbox"/>	<input type="checkbox"/>	VII Problems with Medication	<input type="checkbox"/>	<input type="checkbox"/>
III Dissatisfied with Quality of Mental Health Care	<input type="checkbox"/>	<input type="checkbox"/>	VIII Request to be seen	<input type="checkbox"/>	<input type="checkbox"/>
IV Dissatisfied with Response to Non-Medical Request	<input type="checkbox"/>	<input type="checkbox"/>	IX Request for Off-site Specialty Care	<input type="checkbox"/>	<input type="checkbox"/>
V Conduct of Healthcare Staff	<input type="checkbox"/>	<input type="checkbox"/>	X Other	<input type="checkbox"/>	<input type="checkbox"/>

E/K.

9/28/06

## Exhibit 2

Prison Health Services  
Inmate Informal GrievanceJAMES MONROE  
NAME167435  
AIS #A-2-16-B  
UNIT12-11-06  
DATE

## PART A--Inmate Complainant

I Saw Nurse Swindle on 11-30-06 about my  
pain that I'm having down my right side she put me down  
to see the doctor. I still have pain see doctor that I  
am #3 sick call. I'm having real bad pain down my  
right side. I need to be X-rayed something to do  
with me.

Thank

James Monroe.

James Monroe  
INMATE SIGNATURE

## PART B - RESPONSE

DATE RECEIVED

MEDICAL STAFF SIGNATURE

DATE

If resolution has not occurred and you wish to file a formal grievance you may request a grievance form from the Health Services Administrator. Return the completed grievance form to the Health Service Administrator.

	Y	N		Y	N
I Dissatisfied with Quality of Medical Care	<input type="checkbox"/>	<input type="checkbox"/>	VI Delay in Health Care Provided	<input type="checkbox"/>	<input type="checkbox"/>
II Dissatisfied with Quality of Dental Care	<input type="checkbox"/>	<input type="checkbox"/>	VII Problems with Medication	<input type="checkbox"/>	<input type="checkbox"/>
III Dissatisfied with Quality of Mental Health Care	<input type="checkbox"/>	<input type="checkbox"/>	VIII Request to be seen	<input type="checkbox"/>	<input type="checkbox"/>
IV Dissatisfied with Response to Non-Medical Request	<input type="checkbox"/>	<input type="checkbox"/>	IX Request for Off-site Specialty Care	<input type="checkbox"/>	<input type="checkbox"/>
V Conduct of Healthcare Staff	<input type="checkbox"/>	<input type="checkbox"/>	X Other	<input type="checkbox"/>	<input type="checkbox"/>

## Exhibit 3

Prison Health Services  
Inmate Informal GrievanceJames Monroe  
NAME167435  
AIS #B-2-16-B  
UNIT12-12-06  
DATE

## PART A--Inmate Complainant

THIS IS MY #3 GRIEVANCE ABOUT I NEED TO SEE  
DOCTOR ABOUT MY BACK, I HAVE FILED 2 GRIEVANCES OVER AT  
HEALTH CARE AND NEVER GOT A RESPONSE, WANTED TO SAY  
I NEED TO SEE DOCTOR ABOUT MY PAIN DOWN MY RIGHT  
SIDE.

James Monroe  
INMATE SIGNATURE

## PART B - RESPONSE

DATE RECEIVED

MEDICAL STAFF SIGNATURE

DATE

If resolution has not occurred and you wish to file a formal grievance you may request a grievance form from the Health Services Administrator. Return the completed grievance form to the Health Service Administrator.

	Y	N		Y	N
I Dissatisfied with Quality of Medical Care	<input type="checkbox"/>	<input type="checkbox"/>	VI Delay in Health Care Provided	<input type="checkbox"/>	<input type="checkbox"/>
II Dissatisfied with Quality of Dental Care	<input type="checkbox"/>	<input type="checkbox"/>	VII Problems with Medication	<input type="checkbox"/>	<input type="checkbox"/>
III Dissatisfied with Quality of Mental Health Care	<input type="checkbox"/>	<input type="checkbox"/>	VIII Request to be seen	<input type="checkbox"/>	<input type="checkbox"/>
IV Dissatisfied with Response to Non-Medical Request	<input type="checkbox"/>	<input type="checkbox"/>	IX Request for Off-site Specialty Care	<input type="checkbox"/>	<input type="checkbox"/>
V Conduct of Healthcare Staff	<input type="checkbox"/>	<input type="checkbox"/>	X Other	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 4



PRISON  
HEALTH  
SERVICES  
INCORPORATED

PRISON HEALTH SERVICES, INC.  
SICK CALL REQUEST

Print Name: JAMES K. MARRON Date of Request: 12-11-06  
 ID # 167435 Date of Birth: 9/8/67 Location: B-2-16-B  
 Nature of problem or request: I AM STILL HAVING BACK PAIN WHEN I TURN MY  
NECK TO THE LEFT & RIGHT IT SENDS PAIN DOWN MY RIGHT SIDE  
THIS IS MY THIRD SICK CALL SEE NURSE ONCE, SHE PUT ME DOWN  
TO SEE DOCTOR HAVEN'T SEEN HIM AS OF YET

James Marron  
Signature

DO NOT WRITE BELOW THIS LINE

Date:     /     /      
 Time:     AM     PM  
 Allergies:                     

RECEIVED	
Date:	
Time:	
Receiving Nurse Initials	<u>          </u>

(S)ubjective:

(O)bjective (V/S): T:            P:            R:            BP:            WT:           

(A)ssessment:

(P)lan:

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PRN

CIRCLE ONE

Check One: ROUTINE ( ) EMERGENCY ( )

If Emergency was PHS supervisor notified: Yes ( ) No ( )

Was MD/PA on call notified: Yes ( ) No ( )

SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE



## Exhibit 5

11-30-06

WENT AND SEEN NURSE AT 7:08 AM AND  
11-30-06 SHE PUT ME DOWN TO SEE  
DOCTOR,

NURSE SWIDDED

ITS BEEN A WEEK AND STILL HAS NOT  
SEEN DOCTOR FOR MY BACK AND PAIN